



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "*

UN COMMISSION ON HUMAN RIGHTS

60th Session

15 March-26 April 2004

Agenda Item 11

Delivered on: 1 April 2004

## The Independence of Judges and Lawyers

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) welcomes the appointment of the new Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, and looks forward to working closely with him on this important mandate. The CIJL also warmly congratulates Ms. Shirin Ebadi, an Iranian human rights lawyer who was the recipient of the 2003 Nobel Peace Prize.

The right to be tried by a competent, independent and impartial tribunal established by law is fundamental to the protection of human rights and the rule of law. The Human Rights Committee has stated that even in times of war or during a state of emergency, *"only a court of law may try and convict a person for a criminal offence."* We are extremely worried that this fundamental right has been jeopardized in some countries. We urge all States to fully abide by their obligations to uphold basic due process standards.

Equality before the law is one the pillars of human rights. One the most blatant inequalities is that suffered by many women who suffer discrimination in the administration of justice. Where it exists, discrimination can be present in women's access to justice and/or in the manner in which justice is administered. The ICJ/CIJL calls upon States to eliminate gender bias in the administration of justice by establishing the legal protection of the rights of women on an equal basis with men and ensuring through competent national tribunals that there is effective protection of women against any act of discrimination.

Judicial corruption continues to be a major obstacle to the independence of the judiciary. When judges are corrupt and extraneous factors influence their rulings, the independence and impartiality of the judiciary is seriously compromised. The ICJ/CIJL, therefore, urges States that do not have codes of judicial conduct to adopt and put into practice the Bangalore Principles of Judicial Conduct that were noted at the last Commission. These Principles go a long way toward establishing judicial accountability.

The number of attacks against the independence of judges and lawyers continued to rise during 2003. The attacks ranged from legislation curtailing the independence of the judiciary to physical attacks and prosecution of judges and lawyers for discharging their professional functions. During 2003, the CIJL addressed numerous urgent interventions to Governments regarding such attacks. Lawyers denouncing human rights violations were particularly targeted. Also attacked were lawyers who were identified with their clients' causes. For the discharge of their professional duties, lawyers were threatened (Mexico, India, Colombia); arrested (China, Malaysia, Colombia and the Russian Federation); disbarred (Iran and Lebanon); criminally charged (China, Kyrgyzstan and the Russian Federation); prohibited from representing certain clients (USA); not allowed to leave their countries (Syria and Tunisia); and disappeared (Nepal).

The independence of judges also came under attack in 2003. They were arrested (Zimbabwe and South Africa); “blacklisted” for deviating from minimum sentencing guidelines (USA); removed without due process (Serbia and Montenegro, Venezuela and Argentina); appointed outside of established procedures (Swaziland); verbally attacked (Italy and Colombia); and assassinated (Brazil, Cambodia and Pakistan). In certain occasions, the Executive refused to comply with judicial rulings (USA and Malawi), thereby violating the separation of powers.

The CIJL also observed the trials of lawyers in Malaysia, Lebanon and Turkey.

## **Fact-finding missions**

### **Swaziland**

In January 2003, the ICJ/CIJL conducted a fact-finding mission to Swaziland in the midst of a crisis in the judiciary which originated from a statement by the Prime Minister publicly denouncing two rulings of the Court of Appeal and the subsequent resignation of that Court. The Chief Justice was compelled to resign while other officers of the court were dismissed, demoted or threatened with deportation. The Court of Appeal, the highest judicial body in Swaziland, is still not functioning.

The mission concluded that threats to judicial independence are deeply rooted and routine in Swaziland and that periodic attacks on the judiciary by the Executive have given way to an Executive attitude that holds the judiciary, the rule of law, and the separation of powers in virtual contempt, in particular when they conflict with entrenched interests. The CIJL found that informal political advisors to His Majesty King Mswati III, including members of an unaccountable advisory body commonly known as the “Thursday Committee”, lie at the root of the assault on the rule of law.

### **Honduras**

Suite to a fact-finding mission to Honduras in September 2003, the ICJ/CIJL found that both the judiciary and the Bar were affected by a high degree of politicization and corruption which, in the case of the Bar led to a struggle for power that resulted in a number of lawyers being charged with sedition. The ICJ/CIJL mission also expressed its alarm at Parliament’s decision to openly defy a ruling of the Supreme Court, in direct violation of the doctrine of separation of powers enshrined in the Constitution and the independence of the judiciary.

The mission recommended the promulgation of a new Organic Law on the Judiciary and the creation of a Council of the Judiciary that would be in charge of, among other things, appointing and removing Magistrates, functions currently exercised by the President of the Supreme Court.

## **Trial observations**

### **Turkey**

In the course of last year, the ICJ/CIJL observed three trials against lawyers and human rights defenders in Turkey. Although certain aspects of the right to a fair trial were

respected, serious concerns persisted in relation to the independence and impartiality of the tribunal.

### Leyla Zana

The re-trial of Leyla Zana and three other Kurdish former Parliamentarians started on 21 February 2003 at No. 1 Ankara State Security Court pursuant to a judgment of the European Court of Human Rights (ECtHR) in 2001. The ECtHR ruled that the defendants had not received a fair trial in 1994, when they were convicted by the Ankara State Security Court of “membership of an armed gang” and were sentenced each to a term of 15 years imprisonment. The ECtHR held that the Ankara State Security Court, which at the time of the trial included a military judge, was not “an independent and impartial tribunal within the meaning of Article 6 of the Convention”. Following this ruling, Leyla Zana and her three co-defendants are being re-tried.

The ICJ/CIJL monitored ten of the last twelve hearings in this re-trial. The 13<sup>th</sup> hearing will take place on 2 April 2004. The ICJ/CIJL believes that in so far as the principles of equality of arms between the prosecution, the defence and the independence and impartiality of the tribunal and the presumption of innocence are concerned, there continue to be significant defects. The CIJL is concerned that the layout of the Court, the Court’s disparity of approach to defence and prosecution witnesses, lawyers and evidence, the failure to require the prosecution to disclose relevant evidence, the lack of continuity of the composition of the judges’ panel and serious indications that the fundamental principle of the presumption of innocence was not respected are all factors which have lead to a conclusion that the defendants have not been afforded a fair trial. Furthermore, and despite the ruling by ECtHR, the defendants continue to be detained, which amounts to a violation of their right to liberty and security. The verdict in this case is due to be announced on 2 April.

### The President of the Diyarbakir Bar Association

The CIJL also monitored the trial of Sezgin Tanrikulu, the President of the Diyarbakir Bar Association, and three other lawyers, all of whom were charged with “professional misconduct” for having represented a group of villagers who sought compensation from State authorities for the destruction of their homes in South-East Turkey by Security Forces in 1994.

Although the defendants were acquitted on 24 December 2003, the CIJL expressed its concern at the fact that the charge was brought at all, given the lack of sufficient evidentiary basis and concluded that the charge was brought to punish the lawyers for representing evicted villagers. Furthermore, the CIJL expressed its deep concern at the role of the gendarmerie throughout the proceedings against the lawyers. Despite the fact that the gendarmerie filed the original complaint against the lawyers, it was tasked by the Prosecutor’s office and the Ministry of Justice to conduct the pre-trial investigation including taking statements from potential witnesses, several of whom were reportedly heavily coerced into making false statements against the defendants. The dual role of the gendarmerie as both complainant and investigator in the same case creates a conflict of interest and strengthens the perception that the prosecution was politically motivated.

### Lawyer Filiz Kalayci

On 20 May 2003, the CIJL observed the trial of Filiz Kalayci, a lawyer who was charged with “insulting the Ministry of Justice” and “professional misconduct” on account of an article that she wrote in a national newspaper regarding F-Type prisons in Turkey. Ms. Kalayci’s trial took place before No. 4 Ankara Heavy Penal Court.

Even though the charges were dismissed, the CIJL expressed its concern that the charges were ever brought at all and were pending for almost 15 months, thereby violating the right to be tried with undue delay. The CIJL is of the opinion that the charges were a manifestation of State-sponsored harassment and intimidation of a member of the Turkish legal profession who had sought to exercise her freedom of expression. The CIJL is of the view that the criminal proceedings against Ms. Kalayci were in fact brought for a political purpose. As such, they were brought in order to punish an individual lawyer who had sought to defend the human rights of Turkish citizens detained in F-Type prisons and also as a means of intimidating both her and her fellow members of the legal profession into refraining from expressing similar opinions in the future.

We strongly urge the Turkish Government to ensure that lawyers and human rights defenders are attacked or prosecuted for discharging their professional duties or for pursuing legitimate activities. We furthermore urge the Government to abide by its international obligations, particularly article 14 of the ICCPR and articles 5 and 6 of the ECHR.

## **Venezuela**

In the last months of 2003, the CIJL expressed its concern at the attempts by the Venezuelan Government to infringe upon the independence of the judiciary. Firstly, the CIJL criticised certain articles of the draft Organic Law on the Supreme Court. If enacted, this law will allow Parliament, at any time and by a simple majority vote, to increase the number of judges sitting in the Court and to declare null and void any appointment of a judge of the Court. The latter provision runs contrary to the Venezuelan Constitution, which requires a two-thirds majority to remove any judge of the highest court of the country. Secondly, the CIJL expressed its alarm at the closure of the First Administrative Court. All judges of the First Administrative Court except one, who resigned previously, were removed 22 days after proceedings were opened against them by a provisional commission. The removals were carried out without due process and based on an alleged “legal error” on a topic disputed in domestic law. The ICJ/CIJL urges the Venezuelan Government to respect the independence of the judiciary.